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C O N F I D E N T I A L BRASILIA 001748

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TAGS: [MARR](#) [PREL](#) [BR](#) [KICC](#) [POL](#) [MIL](#)

SUBJECT: BRAZIL: PURSUIT OF ARTICLE 98 AGREEMENT

REF: (A) STATE 145167 (B) BRASILIA 1291

Classified By: DepPolCouns Lawrence Cohen, reasons: 1.4 (b & d)

1. (U) In separate meetings, poloff delivered ref A points outlining continued USG interest in concluding an Article 98 agreement with Brazil to Ministry of Foreign Relations (MRE) U.S.-Canada Division Chief Paulo Alvarenga and to MRE United Nations Division Chief Carlos Duarte. Both Alvarenga and Duarte had participated in the May U.S.-Brazil Pol-Mil bilaterals (ref B) and were familiar with the Article 98 issue. Alvarenga deferred comment to Duarte, whose office has the lead on Article 98.

2. (C) Referring to the Article 98 discussions during the May bilaterals, Duarte reiterated Brazil's strong support for the ICC -- a position reflected, he said, in domestic public opinion. Because of this depth of commitment, Brazil would not undermine its "ICC membership obligations." However, Brazil's own loyalty to the ICC, Duarte felt, did not preclude the possibility that a mutually-acceptable alternative to an Article 98 agreement could be found. Repeating a long-standing GOB position, Duarte commented that neither he nor his superiors could conceive of any occasion where Brazil would subject U.S. citizens on Brazilian soil to ICC jurisdiction. He added that there was a perception in Brazil of excessive USG militancy towards the ICC, although USG concerns that led to this position were clearly understood by the GOB. He said he hoped the United States, in the future, would be less confrontational towards the Court.

4. (C) Brazil, he emphasized, remained eager to work out a solution. He suggested the USG consider submission of another proposal with a modified text referring exclusively to U.S. military and official personnel rather than American citizens. Poloff responded that, with ninety Article 98 agreements already signed with various nations the USG probably would not consider much alteration of the standard Article 98 agreement text. Poloff added that senior USG policymakers remained keenly focused on this issue and would not be reluctant to raise it in meetings with their Brazilian counterparts.

5. (C) Comment: Brazil's commitment to the ICC is genuine and robust, but MRE officials do not want conflict with us over the Article 98 issue -- they understand clearly our specific national concerns and also worry about a U.S. withdrawal over time from international peacekeeping because of those concerns. Duarte's comments above suggest the GOB wants to leave the door open to some sort of compromise, and GOB assurances that under no imaginable scenario would American citizens be extradited from Brazil to the ICC appear sincere. The question then emerges as to what form a compromise might take -- options might include a specific bilateral agreement that accomplishes our goals but does so outside the standard Article 98 format, or inserting non-extradition language into a broader DCA or SOFA document were Brazil to demonstrate openness to negotiating such bilateral agreements. Such options would not be easy, quick or certain to succeed, but they may merit further consideration.

Duddy